THE HON'BLE SRI JUSTICE N.V. RAMANA

W.P. No. 24945 of 2000

Oral order:

The petitioners, who are working in various capacities, claim that they completed more than 240 days of service with the respondents-AP GENCO, and that they have been working with them for the last seven to 10 years, and that they are being paid the minimum wages prescribed under the Minimum Wages Act, apart from being extended the benefits of Provident Fund, Medical Allowance etc. It is their case that though they are working as such, and despite the nature of work performed by them for the respondents-AP GENCO, is permanent and perennial in nature, yet the respondents-AP GENCO, are not showing their names in the records as employees of the respondents-AP GENCO, but are showing them as labour working with Patel Engineering Company, with whom they entered into agreements for providing labour. Hence, the petitioners contending that respondents-AP GENCO are indulging in exploitation of labour, have filed this writ petition seeking a direction to the respondents-AP GENCO to regularize their services from the date of the initial appointment with all consequential benefits.

The learned counsel for the petitioners submitted that the petitioners have been working for the respondents-AP GENCO for more than seven to ten years, they have completed more than 240 days of continuous service, and having regard to the fact that the nature of work performed by the petitioners is permanent and perennial, they are entitled to regularization of their services, but the respondents-AP GENCO are showing them as if they are employees of their contractor. In support of his submission that when facts are not disputed, despite existence of alternative remedy, the Court cannot refuse or shirk its responsibility to exercise its jurisdiction under Article 226 of the Constitution of India, he placed reliance on the judgments of the apex Court in **K.K. Kochunni v. State of Madras**[1], **Hussainbhai v. Alath Factory Tezhilli Union**[2], **L.G. Chaudhari v. Secy., L.S.G. Dept., Govt. of Bihar**[3], **Radha Raman Samanta v. Bank of India**

and Ors.[4], **U.P. State Spinning Co. Ltd. v. R.S. Pandey & Anr.**[5] and **Mineral Exploration Corpn. Employees' Union v. Mineral Exploration Corpn. Ltd.**[6] and of this Court in **P. Satyanarayana vs. Secretary, Govt. of India**[7] and **K. Gopal Reddy v. Secretary, M/s. Vijaya Co-op. House Buildings Society**[8].

The respondents filed counter. The learned Standing Counsel for the respondents-AP GENCO submitted that there is no relationship of master and servant between the respondents-AP GENCO and the petitioners. The petitioners are employees of the contractor, namely M/s. Patel Engineering Company, and in the course of execution of contract works of the respondents-
AP GENCO, the petitioners were engaged, and they cannot seek absorption/regularization in the service of the respondents-AP GENCO. She further submitted that in view of the judgment of the apex Court in "***Steel Authority of India Ltd. v. National Union Water Front Workers***[1]" the remedy of the petitioners is to approach the labour authorities under the Industrial Disputes Act, 1947, and no relief can be granted to them.

Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents-AP GENCO.

Whether the petitioners are employees of the contractor or of the respondents-AP GENCO and whether they worked for more than seven to ten years, and have completed more than 240 days of continuous service, and whether the nature of work performed by the petitioners for the respondents through the contractor is permanent and perennial are all disputed questions of fact, which cannot be conveniently gone into by this Court under Article 226 of the Constitution of India, for they require adducing of evidence by the parties. Be that as it may, in ***Steel Authority of India Ltd's case*** the apex Court observed that the determination of question as to whether the contract of employment of labour is a genuine one or a mere ruse/camouflage to evade the provisions of beneficial labour legislation, requires inquiry into disputed questions of facts which cannot conveniently be made by High Courts in exercise of jurisdiction under Article 226 of the Constitution, and the appropriate authority to go into those issues will be Industrial Tribunal/Court whose

determination will be amenable to judicial review. Hence, this Court, in exercise of jurisdiction under Article 226 of the Constitution, cannot go into the disputed questions of fact and grant any relief to the petitioner, and the remedy of the petitioner, if any, is to approach the labour authorities under the Industrial Disputes Act, 1947.

Accordingly, the writ petition is disposed of granting liberty to the petitioners to approach the labour authorities under the Industrial Disputes Act, 1947 for the relief sought in the writ petition. No costs.

N.V. RAMANA, J.

Dated: 1st February, 2007.
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[1] AIR 1959 SC 725
[2] AIR 1978 SC 1410
[3] AIR 1980 SC 383
[4] 2004 (1) Supreme 134
[5] 2005 (7) Supreme 382
[6] 2006 (6) Supreme 281
[7] 2000 (4) ALT 274
[8] 2004 AIHC 1687
1 2001 (6) ALD 1 (SC)